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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216461 **DATE:** February 19, 1985
MATTER OF: University Research Corporation

DIGEST:

1. As a general rule, offerors must be given sufficient detail in an RFP to enable them to compete intelligently and on a relatively equal basis.
2. When a protester alleges that specifications are excessively general and vague so as to prevent the submission of an intelligent proposal, GAO will not only analyze the specifications to see if they adequately detail the agency's requirements, but will also consider whether other proposals were received in order to determine whether the level of uncertainty and risk in the solicitation was acceptable.
3. A contracting agency may impose a restriction on the competition only if it can be shown that the restriction is deemed necessary to meet its actual minimum needs.
4. In a negotiated procurement, any information that is given to a prospective offeror must be promptly furnished to all other prospective offerors as a solicitation amendment if the information is necessary in submitting proposals, or if the lack of such information would be prejudicial.

University Research Corporation (URC) protests the award of a contract to Meridian House International, the incumbent contractor, under request for proposals (RFP) No. ROD-NEB-84-10, issued by the Agency for International Development (AID). The procurement was for the acquisition of a contractor-operated program providing reception, orientation, and hospitality services to foreign nationals participating in various programs in the United States under AID auspices. We sustain the protest.

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URC, which did not submit a proposal, believes that the agency favored retaining Meridian House as the contractor from the outset of the procurement. In this regard, URC contends that the RFP's specifications were drafted in such a general and vague manner that only Meridian House, with its background knowledge as the incumbent, could effectively compete. Additionally, URC complains that certain specifications unduly restricted competition by requiring offerors to have the necessary physical facilities and qualified volunteer staff in place at the time of award. URC further asserts that the competition was defective because AID provided particular detailed information to the firm prior to the proposal closing date, which information was not furnished to the other prospective offerors by amendment.

Background

In January of 1984, AID published a notice in the Commerce Business Daily (CBD) of its intent to issue a solicitation for the services in question at some future point. Interested firms were requested to furnish detailed statements to AID regarding their ability to meet the agency's needs, and were advised that copies of the solicitation would only be sent to those firms submitting such information.

Seven firms including URC furnished capability statements and accordingly were sent copies of the RFP when it was issued on August 23, 1984. The RFP contemplated that the successful offeror would develop and provide a wide range of services for foreign participants in the AID-sponsored programs, such as: arranging hotel reservations or other suitable accommodations in the Washington, D.C. area and negotiating discounts when possible; maintaining a staffed reception office 7 days a week to meet the participants upon arrival and arrange transportation to their accommodations; conducting various orientation programs; arranging hospitality in American homes in the area; facilitating attendance at and participation in various social, cultural, and educational activities; conducting tours; and providing financial information and assistance. Also, the contractor was required to develop and publish participant-oriented publications regarding such matters as "volunteer activity, significant developmental achievements, and follow-up."

The RFP also required offerors to demonstrate in their proposals that they would have suitable physical facilities and a qualified and trained volunteer staff in place at the time of award. (It is apparent that AID anticipated from prior experience with the incumbent that contractor-furnished volunteers would be used as staffing for many of the services.) The RFP indicated that AID desired a great degree of flexibility on the contractor's part, as the specifications stated that the number of foreign participants per week could vary from 1 or 2 individuals to groups of 50 to 100 or more, with an estimated annual total of 1200, and that as little time as a same-day notice might be given before arrivals in certain instances.

Prior to the September 24 closing date, URC complained to AID by letter that the specifications heavily favored Meridian House in view of its background knowledge as the incumbent, and requested AID to provide more detailed information in numerous specification areas. URC also pointed out that only Meridian House could have the required facilities and trained volunteer staff in place at the time of proposal submission, thereby gaining an undue competitive advantage over the other prospective offerors. URC felt that it would be economically infeasible for other firms to meet these requirements prior to receiving the contract award. URC complained that the 30-day response time was insufficient, and accordingly asked AID to extend the closing date.

AID did in fact provide URC with additional information in writing, which it did not furnish to the other firms, but refused to extend the closing date. URC did not submit a proposal because the firm felt that AID's responses to its concerns were inadequate. URC then timely protested to this Office prior to the closing date, challenging the RFP's specifications. Meridian House was the only firm to submit a proposal, and AID awarded it the contract in the face of the protest. The contract was awarded for a 5-year period (November 16, 1984 through November 15, 1989) on a cost-plus-fixed-fee basis, with the total price estimated to be approximately \$4.3 million.

Analysis

(1) Specification Inadequacy

As a general rule, offerors must be given sufficient detail in an RFP to enable them to compete intelligently and on a relatively equal basis. Specifications must be

free from ambiguity, and must describe the agency's minimum needs accurately. Worldwide Marine, Inc., B-212640, Feb. 7, 1984, 84-1 CPD ¶ 152. When a protester alleges that specifications are excessively general and vague so as to prevent the submission of an intelligent proposal, we will not only analyze the specifications to see if they adequately detail the agency's requirements, but will also consider whether other proposals were received in response to the RFP in order to determine whether the level of uncertainty and risk in the solicitation was acceptable. See Memorex Corporation, B-212660, Feb. 7, 1984, 84-1 CPD ¶ 153.

In this matter, we have no doubt that AID was justified in seeking a great degree of flexibility from the contractor in terms of planning and operation, given the types of services being provided. For example, although URC complained that the RFP did not contain an estimate of the number of volunteer staff that would be required, AID responded that there was no required number, but that the contractor should be able to field enough volunteers to handle groups in the sizes expected. Because the expected group sizes themselves varied so greatly in range, we do not think that AID realistically could have provided an estimated number of the volunteers that would be needed. Essentially, it was left to the offerors to propose a suitable number of volunteers to perform adequately the required services, and we do not think that the specifications can be regarded as overly vague on this point. Similarly, since the RFP specified that the group sizes could range from 1 to 100 individuals or more, and that the total number of participants was estimated to be 1200 per year, we do not believe that URC can successfully argue that not enough information was provided to offerors in this area so as to prohibit intelligent proposal preparation.

However, we believe that certain other specifications were so indefinite as to lead to the conclusion that AID's requirements could have been set forth in a more appropriate manner. We note that the specifications did not indicate the number and content of the orientation programs that the contractor was required to conduct, other than to state in vague terms that the orientation programs would range in length from 1 to 5 days. As we believe URC rightly points out, it would be impossible for offerors to

determine from this whether they were to conduct many short programs, or to conduct a lesser number of more extensive ones. Also, the RFP required the contractor to conduct seminars or other specific programs for special groups, several hours or days in length, but never established what would be a "specific" program or what would constitute a "special" group. We believe this requirement was too general since it stated only that the length of such programs might vary from several hours to several days in length, without giving offerors more detailed information as to what was expected in terms of both time and content. With respect to the participant-oriented publications required from the contractor, there was no clear indication in the solicitation as to the nature, quality, or quantity of such publications. Therefore, offerors could only guess as to what kinds of publications would meet the agency's requirements.

Most importantly, we note that there were no offerors under this solicitation other than the incumbent, even though seven firms submitted capability statements in response to the CBD notice. Because of this circumstance, we believe that other prospective offerors may have viewed the procurement in the same way as URC; that is, that there was an unacceptable amount of uncertainty and risk in the solicitation which precluded them from submitting proposals. Memorex Corporation, supra.^{1/}

(2) Unduly Restrictive Requirements

We agree with URC that the RFP's requirements that offerors have dedicated facilities and a qualified and trained volunteer staff in place at the time of award, and demonstrate compliance with these requirements in their proposals, unduly restricted competition. A contracting agency may impose a restriction on the competition only if it can be shown that the restriction is deemed necessary to meet its actual minimum needs, since the benefit of competition both to the government and to the public in terms of price and other factors is directly proportional

^{1/}The only contrary evidence on this point is a statement from AID that another prospective offeror informed the agency that it did not compete because it had shifted most of its operations to New York City and had drastically reduced its Washington, D.C. staff, not because it objected to the specifications. We do not find this to be persuasive.

to the extent of the competition. Tennant Co., B-205914.2, Dec. 20, 1982, 82-2 CPD ¶ 546. When a protester challenges particular specifications as being unduly restrictive of competition, the burden is upon the agency to establish prima facie support for the restrictions. Lista International Corp., 63 Comp. Gen. 447 (1984), 84-1 CPD ¶ 665. We do not believe that AID has met that burden here.

It is apparant from the record that only Meridian House, because of its incumbent status, had the requisite facilities and volunteer staff in place at the time of proposal submission. We agree with URC that it would have been economically prohibitive for offerors other than Meridian House to negotiate the necessary facility leases and to recruit and train a qualified volunteer staff before being selected to receive the contract award. (For that matter, the RFP never stated what kind of qualifications were required in the volunteers, nor how and to what extent they were to be trained). In addition, the other offerors were given only 30 days to meet these requirements, which we believe would have been particularly onerous. AID urges that the other offerors could have satisfied the requirements by negotiating leases which were contingent upon receiving the contract award. Although this may have been feasible in certain instances, we do not think that contingent leases would have been possible or practical on a large-scale basis for every offeror, nor does this approach address the problem of recruiting and training the volunteer staff prior to contractor selection.

In our view, although we fully recognize AID's need for uninterrupted contract services, these requirements could have been set forth in a less restrictive manner. The RFP indicated that performance was to commence immediately upon award, so that only Meridian House, with its facilities and volunteer staff already established and functioning, could meet the requirements as of that date. We think it would have been more appropriate for the RFP to have provided that a specific period of time, such as 30 or 60 days, would be available between the date of selection for award and the effective date of the contract in order to enable a successful offeror to obtain the requisite

facilities and recruit and train a qualified volunteer staff. 2/

Our conclusion is based on the long-standing statutory requirement with respect to negotiated procurements that proposals shall be solicited from the maximum number of qualified sources consistent with the nature of the supplies or services being procured. See 10 U.S.C. § 2304(g) (1982). This requirement is fully embodied in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.105 (1984), which specifically provides as well that negotiated contracts shall be awarded competitively "to the maximum practical extent." In our view, AID's specifications regarding facilities and volunteer staff were set forth in the RFP in such a manner that a more extensive competition, which could have been achieved through better solicitation draftsmanship, was effectively precluded to the benefit of Meridian House. See Aero Corporation, 59 Comp. Gen. 146 (1979), 79-2 CPD ¶ 430. It is our opinion that the challenged specification requirements unduly restricted the competition, and we find nothing in AID's administrative report which sets forth sufficient prima facie support for their necessity. Lista International Corporation, supra.

We thus conclude that the procurement did not promote competition "to the maximum practical extent," 48 C.F.R. § 15.105, because of the manner in which the specifications were drafted, thereby resulting in a de facto sole-source award to Meridian House. See Worldwide Marine, Inc., supra.

(3) Failure to Provide Additional
Information

We also think that competition may have been precluded because of AID's failure to furnish the additional

2/Under this procurement approach, Meridian House, if unsuccessful, could continue performance until the successor firm was fully operational, and the government would not have to pay for any start-up costs incurred by the successor firm because the preparation period in question would still be prior to the effective date of the contract.

information it had provided to URC to the other prospective offerors, irrespective of the fact that URC itself did not submit a proposal. In this regard, any information that is given to a prospective offeror under a negotiated procurement must be promptly furnished to all other prospective offerors as a solicitation amendment if the information is necessary in submitting proposals, or if the lack of such information would be prejudicial. 48 C.F.R. § 15.410(c). We believe that AID should have been cognizant of this regulatory provision and have furnished by amendment the information it had given to URC to the other firms to which it had sent copies of the RFP, on the reasonable assumption that the information might be material for the preparation of competitive proposals.

URC's requested relief in this matter is that AID terminate Meridian House's contract for the convenience of the government at the end of the first year, thereby enabling the collection of substantial contract performance data in the meantime, and to recompet the remaining requirements under a new solicitation which will contain more properly drafted specifications to allow for effective competition. We believe that this is an appropriate and reasonable remedy, given the on-going nature of the requirements, and the agency's undoubted need to avoid any disruption in services. Therefore, by separate letter of today, we are recommending to the Administrator of AID that the present contract be terminated for convenience as of November 15, 1985, and that a new RFP be issued sufficiently in advance of that date so that the competition will be concluded and the successful offeror ready to continue performance immediately upon the termination.

Since this decision contains a recommendation that corrective action be taken, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

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The protest is sustained.

for *Milton J. Aarlan*
Comptroller General
of the United States